IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.324 OF 2006

Shri Narayan Babu Redekar
and Ors. ... Appellants
(Orig. Plaintiff)

Versus

Shri Subrav Ningu Gavade ... Respondent
(Orig. Defendant)

Shri Dilip Bodake for the Appellants

CORAM : S.R. SATHE,J.

DATED : 19/12/2006

P.C. :-

1. Heard learned Advocate for the Appellants.

2. Appellants have filed the suit against the defendant simplicitor for permanent injunction alleging that the plaintiffs are in possession and defendant is obstructing. The trial Court came to the conclusion that the plaintiffs have failed to prove their possession and on the contrary the defendant is in possession of the suit property. The said finding is confirmed by the first Appellate Court.

3. The learned Advocate for the Appellants tried to argue before me that in the instant case the defendant had contended that he is in possession of the suit land as protected tenant and in view of such contention it was necessary for the trial Court to refer the matter to the tenancy authority. However, it must be noted that it is not in each and every case that the Civil Court has to refer the matter to the tenancy authority merely because in the written statement the defendant has stated that he is tenant. Ultimately, so far as the suit in question is concerned, the only point is whether the plaintiff has proved his possession of suit land on the date of the suit. The learned trial Judge so also the first appellate Court have held that plaintiffs were not in possession of the suit land. Their names were not entered in Kul and Khand column of the suit land. On the contrary the defendant’s name was appearing in the said column. So, both the courts below have rightly held that the plaintiffs were not in possession of the suit land and hence dismissed the suit.

4. There is no reason to interfere with the said findings. No substantial question of law is involved in the matter. Hence the appeal is dismissed in limine.

(S.R.SATHE,J.)